

2534

No. 11947

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

COMMERCIAL WHOLESALERS, INC., a corpo-
ration,

Appellant,

vs.

INVESTORS COMMERCIAL CORPORATION,

Appellee.

TRANSCRIPT OF RECORD

Upon Appeal From the District Court of the United States
for the Southern District of California
Central Division

FILED

JUL 1 1948

PAUL P. O'BRIEN,
CLERK

No. 11947

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

COMMERCIAL WHOLESALERS, INC., a corporation,

Appellant,

vs.

INVESTORS COMMERCIAL CORPORATION,

Appellee.

TRANSCRIPT OF RECORD

Upon Appeal From the District Court of the United States
for the Southern District of California
Central Division

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

	Page
Appeal:	
Notice of	65
Statement of Points on Which Appellant Intends to Rely on (District Court).....	67
Statement of Points on Which Appellant Intends to Rely on (Circuit Court).....	70
Application for Confirmation of First Amended Plan of Arrangement	19
Approval of Debtor's Petition and Order of Reference Under Section 321 of the Bankruptcy Act.....	8
Certificate of Clerk.....	68
Certificate on Review.....	43
Final Decree	28
Final Decree, Modification of.....	34
Judgment	63
Modification of Final Decree.....	34
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	65
Notice of Entry of Judgment.....	64
Opinion	58
Order Confirming Arrangement Under Chapter XI.....	21
Order Extending Time Within Which to Petition for Review	38

	Page
Order Granting Leave to Propose Modification of Arrangement	9
Order to Show Cause re Reforming Final Decree.....	33
Petition for Arrangement Under Section 321 in Pending Bankruptcy	5
Petition for Final Decree.....	25
Petition for Leave to Propose First Amended Plan of Arrangement	10
Exhibit A. First Amended Plan of Arrangement....	12
Petition for Order Extending Time to Petition for Review	36
Petition for Reconsidering and Reforming Final Decree	30
Petition for Review of Referee's Order.....	38
Exhibit A. Modification of Final Decree.....	41
Petition in Involuntary Bankruptcy.....	2
Statement of Facts and Points and Authorities of Commercial Wholesalers, Inc., re Petition for Review of Referee's Order by Judge.....	47
Statement of Points on Which Appellant Intends to Rely on Appeal (District Court).....	67
Statement of Points on Which Appellant Intends to Rely on Appeal (Circuit Court).....	70

NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

ALFRED GITELSON

829 Chamber of Commerce Building

1151 South Broadway

Los Angeles 15, Calif.

For Appellee:

CATLIN & CATLIN

433 South Spring Street

Los Angeles 13, Calif. [1*]

*Page number appearing at foot of Certified Transcript.

In the District Court of the United States
Southern District of California
Central Division

No. 44685-O'C

In the Matter of

COMMERCIAL WHOLESALERS, INC.,
a California corporation,

Alleged Bankrupt

PETITION IN INVOLUNTARY BANKRUPTCY

To the Honorable Judges of the United States District
Court, in and for the Southern District of California:

The petition of Herman R. Holsborg, Goldie W. Holsborg and Jack Wolman, respectfully represents:

I.

That Commercial Wholesalers, Inc. is a corporation duly organized under the laws of the State of California, and has had its principal place of business at 7358 Beverly Boulevard, City of Los Angeles, County of Los Angeles, State of California, in said judicial district for a longer portion of the six months immediately preceding filing of this petition than in any other judicial district, and owes debts to the amount of \$1000.00 or more, and is a business corporation, and is not a municipal, railroad, insurance or banking corporation, or building and loan association, and is insolvent, and is not a wage earner nor a person engaged in farming or tillage of the soil, but was engaged as a wholesale jobber of household appliances.

II.

That your petitioners are creditors of said Commercial [2] Wholesalers, Inc., having provable claims amounting in the aggregate in excess of securities held by them in the sum of \$500.00 or more.

III.

That the nature and amount of your petitioners' claims are as follows:

That the claim of Herman R. Holsborg is for moneys loaned to the alleged bankrupt within two years last past, represented by promissory notes due on demand, with interest at 6% upon which there is due and owing from the said alleged bankrupt to the said Herman R. Holsborg, the sum of \$29,621.68, no part of which sum has been paid.

That the claim of Goldie W. Holsborg is for moneys loaned to the alleged bankrupt within two years last past, represented by promissory notes due on demand, with interest at 6% upon which there is due and owing from the said alleged bankrupt to the said Goldie W. Holsborg, the sum of \$31,000.00, and upwards, no part of which sum has been paid.

That the claim of Jack Wolman is for moneys loaned to the alleged bankrupt within two years last past, represented by promissory note due on demand, with interest at 6% upon which there is due and owing from the said alleged bankrupt to the said Jack Wolman, the sum of \$8000.00, and upwards, no part of which sum has been paid.

IV.

That your petitioners further represent that the said Commercial Wholesalers, Inc. did, within four months next preceding the date of the filing of this petition, commit an act of bankruptcy in that it did heretofore, to wit, within four months from the date of the filing of this petition, transfer, while insolvent, a portion of its property, namely, money, to one of its creditors, Metal Service, Inc. and/or Jack Stein, in the sum of \$8750.00, with intent to prefer said Metal Service, Inc. and/or Jack Stein over its other creditors. [3]

Wherefore your petitioners pray that service of this petition, with subpoena, may be made upon the said alleged bankrupt, as provided in the Acts of Congress relating to bankruptcy, and that the said alleged bankrupt may be adjudged by this court to be a bankrupt within the purview of said Acts.

HERMAN R. HOLSBORG
GOLDIE W. HOLSBORG
JACK WOLMAN

FRANCIS F. QUITTNER and
ROBERT E. ROSSKOPF

By Francis F. Quittner

Attorneys for Petitioning Creditors [4]

[Verifications.]

[Endorsed]: Filed Dec. 31, 1946. Edmund L. Smith,
Clerk. [5]

[Title of District Court and Cause]

PETITION FOR ARRANGEMENT UNDER SECTION 321 IN PENDING BANKRUPTCY

To the Honorable J. F. T. O'Connor, Judge of the United States District Court for the Southern District of California, Central Division:

The petition of Commercial Wholesalers, Inc., a business corporation having its principal place of business at 7358 Beverly Blvd., in the City of Los Angeles, County of Los Angeles, State of California, and engaged in the business of stock wholesale jobbing, respectfully represents:

I.

That your petitioner is a business corporation organized and existing under and by virtue of the laws of the State of California, and is a corporation which could become a bankrupt under the Acts of Congress relating to Bankruptcy, and is not a municipal, railroad, insurance or banking corporation, or a building and loan association. [6]

II.

A proceeding in bankruptcy in which your petitioner is the alleged bankrupt entitled "In the Matter of Commercial Wholesalers, Inc., a California corporation, alleged bankrupt", In Bankruptcy No. 44685-O'C, is pending in this Court.

III.

That within six years next preceding the filing of this petition your petitioner has not been known and has not conducted any business by or under any assumed, trade or other name or designation, save and except that your petitioner was formed to take over the assets and liabilities of

Allied Wholesale & Distributing Co., a co-partnership composed of Frederick I. Frischling, Ruth Meretz and Ruth Baker, which co-partnership was formed in August of 1944 and continued until its assets and liabilities were taken over by the debtor on or about October 10, 1946.

IV.

Your petitioner is unable to pay its debts as they mature.

V.

In accordance with Chapter XI of the Bankruptcy Act, your petitioner proposes the arrangement with its unsecured creditors, the provisions of which are hereinafter set forth in a Plan of Arrangement marked Exhibit "A" annexed hereto and by reference made a part hereof, and that a majority of the Board of Directors of your petitioner has duly authorized such action on its part, and the statements made thereon on its behalf. That said plan of arrangement is for the best interests of the creditors, is fair and equitable and feasible; your petitioner has not been guilty of any of the acts, or failed to perform any of the duties which would be a bar to the discharge of a bankrupt; and the said plan of arrangement is proposed in good faith and has not been made or procured by any means, promises, or acts forbidden [7] by the Bankruptcy Act. That petitioner is informed and believes, and upon such information and belief states that a majority in number and amount of the creditors of the petitioner will approve said plan of arrangement.

VI.

The Schedule hereto annexed, marked Schedule A and verified by your petitioner's oath contains a full and true statement of all of its debts, and so far as it is possible to ascertain, the names and places of residence of its

creditors, and such further statements concerning said debts as are required by the provisions of the Acts of Congress relating to bankruptcy.

VII.

The Schedule hereto annexed, marked Schedule B and verified by your petitioner's oath contains an accurate inventory of all of its property, real and personal, and such further statements concerning said property as are required by the provisions of said Acts.

VIII.

The Statement hereto annexed marked Exhibit I and verified by your petitioner's oath contains a full and true statement of all of its executory contracts as required by the provisions of said Acts.

IX.

The Statement hereto annexed and marked Exhibit II and verified by your petitioner's oath contains a full and true statement of its affairs as required by the provisions of said Acts.

Wherefore: Your petitioner prays that proceedings may be had upon this petition in accordance with the provisions of Chapter XI of the Acts of Congress relating to bankruptcy.

COMMERCIAL WHOLESALERS, INC.

By Frederick I. Frischling

Secretary and Treasurer of Said Corp.

Petitioner

ALFRED GITELSON

By Robert R. Ashton, of Counsel

Counsel for Petitioner [8]

[Verified.]

[Endorsed]: Filed Feb. 14, 1947. Edmund L. Smith,
Clerk. [9]

[Title of District Court and Cause]

APPROVAL OF DEBTOR'S PETITION AND ORDER OF REFERENCE UNDER SECTION 321 OF THE BANKRUPTCY ACT

At Los Angeles, in said District, on Feb. 14, 1947, before the said Court the petition of Commercial Wholesalers, Inc., a corporation, that he desires to obtain relief under Section 321 of the Bankruptcy Act, and within the true intent and meaning of all the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said petition is hereby approved accordingly.

It is thereupon ordered that said matter be referred to Hubert F. Laugharn, Esq., one of the referees in bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said Commercial Wholesalers, Inc., a corporation, shall attend before said referee on Feb. 21, 1947 and at such times as said referee shall designate, at his office in Los Angeles, California, and shall submit to such orders as may be made by said referee or by this Court relating to said matter.

Witness, the Honorable Paul J. McCormick, Judge of said Court, and the seal thereof, at Los Angeles, in said District, on February 14, 1947.

(Seal)

EDMUND L. SMITH

Clerk

By F. Betz

Deputy Clerk

[Endorsed]: Filed Feb. 14, 1947. Edmund L. Smith, Clerk. [10]

[Title of District Court and Cause]

ORDER GRANTING LEAVE TO PROPOSE
MODIFICATION OF ARRANGEMENT

Upon the annexed petition of Commercial Wholesalers, Inc., a California corporation, the above named debtor, praying that it be granted leave to propose a modification of the arrangement under Chapter XI of the Act of Congress relating to bankruptcy, heretofore proposed and filed by the debtor herein, and that this Court adjudge that said alteration and modification is duly proposed herein, and it appearing that no notice of a hearing thereof should be given, and no adverse interest having been represented, and sufficient reason appearing to me therefor, it is

Ordered that leave be, and it hereby is, granted to Commercial Wholesalers, Inc., the above named debtor, to propose an alteration and modification of said arrangement as set forth in that certain "First Amended Plan of Arrangement" which is annexed to the annexed petition of said debtor, and it is hereby

Adjudged that said alteration and modification and said arrangement as so altered and modified, a copy of which modified [11] arrangement is annexed to the annexed Petition of said debtor, are duly proposed herein.

Dated: May 5, 1947.

HUBERT F. LAUGHARN

Referee in Bankruptcy

[Endorsed]: Filed Nov. 24, 1947. Edmund L. Smith,
Clerk. [12]

[Title of District Court and Cause]

PETITION FOR LEAVE TO PROPOSE FIRST
AMENDED PLAN OF ARRANGEMENT

To the Honorable Hubert F. Laugharn, Referee in Bankruptcy in the Above Entitled Cause:

The petition of Commercial Wholesalers, Inc., a California corporation, respectfully represents:

I.

Heretofore your petitioner filed herein a Petition for Arrangement under Section 321 of the Bankruptcy Act, proposing an arrangement under Chapter XI of the Act of Congress relating to bankruptcy. Petitioner expressly admits insolvency as alleged in the Involuntary Petition in Bankruptcy on file herein.

II.

That a meeting of creditors has been called herein pursuant to Section 334 of said Act, which meeting has been continued until May 5, 1947.

III.

Petitioner's original Plan of Arrangement has not as yet been confirmed. [13]

IV.

Paul W. Sampsell has heretofore been appointed Receiver of your petitioner. No statutory committee of creditors has been appointed herein.

V.

A substantial number of the creditors of your petitioner have objected to and refused to consent to the original Plan of Arrangement proposed by your petitioner, and

your petitioner therefore desires to propose an alteration or modification of said arrangement, so as to eliminate the features of said arrangement which are objectionable to said creditors.

VI.

A true and correct copy of the arrangement as thus altered and modified is annexed hereto, marked "Exhibit A" and made a part hereof by reference, and entitled "First Amended Plan of Arrangement".

VII.

Your petitioner has made definite arrangements to obtain the cash which would be required under the provisions of the First Amended Plan of Arrangement, and said First Amended Plan of Arrangement is fair and equitable.

VIII.

The aforesaid modification materially and adversely affects the interests of unsecured creditors of your petitioner, except those whose debts have priority.

IX.

No notice should be given of this application because no acceptance heretofore obtained will be deemed to be an acceptance of said modification, and of the arrangement as modified.

Wherefore, your petitioner prays that it be granted a leave to propose said alteration and modification of said arrangement; that this Court adjudge that said alteration and modification and [14] the arrangement as so modified

are duly proposed herein; and that your petitioner have such other and further relief as is just.

COMMERCIAL WHOLESALERS, INC.

By Frederick I. Frischling

Secretary and Treasurer

Petitioner

ALFRED GITELSON

By Robert R. Ashton, of Counsel

Attorney for Petitioner

Paul W. Sampsell, Receiver herein, by and through his attorneys of record does hereby waive notice of hearing of the within petition.

CRAIG & WELLER

By Frank C. Weller

Attorneys for Receiver

“EXHIBIT A”

In the District Court of the United States

Southern District of California

Central Division

In the Matter of Commercial Wholesalers, Inc., a California corporation, Debtor. No. 44685-O’C.

FIRST AMENDED PLAN OF ARRANGEMENT

Commercial Wholesalers, Inc., a corporation, the above named debtor, proposes the following arrangement with its unsecured creditors:

INTRODUCTORY STATEMENT

I.

The debtor, Commercial Wholesalers, Inc., a California corporation, was incorporated under the laws of the

State of California on or about September 11, 1946, its authorized capital being twenty five hundred (2500) shares of common capital stock of a par value of One Dollar (\$1.00) per share. The articles provide for five (5) Directors. The names of the persons who were appointed to act as the first Directors were Herman R. Holsborg, Frederick I. Frischling, Ruth Meretz, Ruth Newman and Marci Adelman. Herman R. Holsborg assumed the office of President of said corporation and Frederick I. Frischling assumed the office [16] of Secretary and Treasurer of said corporation.

Said corporation was formed to take over the assets and the liabilities of Allied Wholesale & Distributing Co., a co-partnership composed of Frederick I. Frischling, Ruth Meretz, Ruth Baker, which co-partnership was formed in August of 1944. That thereafter, and on or about September 10, 1946, said corporation did, in fact, take over the assets and assume the liabilities of said co-partnership.

Pursuant to an agreement between the co-partners of said Allied Wholesale & Distributing Co. and Herman R. Holsborg, it was agreed that Herman R. Holsborg would invest in said corporation the sum of Twenty Five Thousand Dollars (\$25,000.00) and that twenty five per cent (25%) of the capital stock of said corporation should thereupon be issued to each of said four parties, subject to a permit so to do being first duly had and obtained from the Commissioner of Corporations, Department of Investment, Division of Corporations of the State of California. Pursuant to said agreement, said Herman R.

Holsborg did invest in said corporation the sum of Twenty Five Thousand Dollars (\$25,000.00) in cash, but no application for the issuance of the stock of said corporation was ever made to said Commissioner of Corporations, and none of the stock of the corporation was ever issued.

That the debtor corporation was engaged in the business of stock wholesale jobbing of general kitchen, housewares and electrical appliances, including radios and a few specialized hardware items.

The debtor's present situation has been brought about by a certain amount of friction, incompatibility and disharmony between Frederick I. Frischling, Ruth Meretz and Ruth Baker, on the one hand, and Herman R. Holsborg on the other, which has resulted in bringing the executive management of the business to a [17] stalemate and a standstill.

That heretofore a proposed Plan of Arrangement under Chapter XI of the Bankruptcy Act was proposed by the Debtor, but said plan was not acceptable to certain Creditors and it is believed and therefore alleged that the present plan will be acceptable to the Creditors of Debtor, as the Creditor's Committee elected by the Creditors have agreed thereto.

An arrangement under said Chapter XI of the Bankruptcy Act is necessary in order to pay to the Creditors of Debtor the greatest percentage of their claims that is possible under the circumstances and the present plan will accomplish this result.

II.

PROVISIONS MODIFYING OR ALTERING THE
RIGHTS OF UNSECURED CREDITORS

The unsecured debts of the Debtor are divided into the following classes:

A. All debts which have priority under Section 64a (1), (2), (4), (5) of the Acts of Congress Relating to Bankruptcy.

B. All debts incurred after the filing of the petition herein.

C. All proved and allowed claims for debts incurred prior to the filing of the petition herein, including a debt owed to Goldie M. Holsborg in the sum of Forty One Thousand Four Hundred Fifty One and 39/100ths Dollars (\$41,451.39).

All debts included in Class A shall be settled and satisfied by the payment to the holders thereof of one hundred per cent (100%) of their respective debts, to be paid in cash upon confirmation of the arrangement.

All debts included in Class B shall be settled and satisfied by the payment to the holders thereof of one hundred per cent (100%) of their respective debts, payable as the same shall become [18] due, except that the time of payment of all or any part of said debts may be extended by agreement with the creditor to whom such debts are due, and such extended debts shall, when due, have priority in payment over the other debts affected by this arrangement, save and except those included in Class A.

All debts included in Class C shall be settled and satisfied by payment to the holders thereof of forty per cent (40%) of their respective claims, provided however that

the debtor shall not in any event be required to pay to the creditors of Classes A, B and C including all costs and expenses of administration, a sum in excess of forty five per cent (45%) of the aggregate amount of all debts and proved and allowed claims of Classes A, B and C less the costs and expenses of administration; and in the event that forty five per cent (45%) of the aggregate of the debts and proved and allowed claims of Classes A, B and C less the costs and expenses of administration shall be insufficient to pay the debts included in Classes A and B including the costs and expenses of administration, plus forty per cent (40%) of the proved and allowed claims included in Class C, then the payments to the holders of the claims included in Class C shall be proportionately reduced by such excess over forty five per cent (45%) of the aggregate of the debts and proved and allowed claims included in Classes A, B and C excluding the costs and expenses of the administration. Said sum shall be paid in cash to the holders of the claims included in Class C within ten (10) days after the confirmation of this plan and the time for the filing of claims herein shall have expired.

III.

Upon confirmation of this arrangement, Herman R. Holsborg shall return unto the debtor estate the sum of approximately Thirteen Thousand Six Hundred and Ninety Dollars (\$13,690.00) in [19] cash heretofore removed by him from the assets of the debtor corporation. In the event that said Herman R. Holsborg shall fail or refuse so to return said sum unto the debtor, the debtor shall institute such proceedings and take such steps as it may deem necessary or advisable in order to cause the return of said sum to the debtor corporation.

All liens and/or attachments obtained or levied upon the assets of the debtor corporation within four (4) months immediately preceding the filing of the involuntary petition in bankruptcy herein, shall be released. In the event that any creditors having so obtained such a lien or levied such an attachment shall fail or refuse to voluntarily relinquish the same, the debtor and/or Receiver shall take such steps as necessary or advisable in order to obtain the release of such lien or attachment; providing, however, that the debtor shall not voluntarily permit any creditor to procure a preference over any other creditor save and except as in Article II hereof provided.

IV.

The debtor corporation shall pay all of the costs of administration herein, including the costs of Receivership, the fee of the Receiver, to be such sum as may be fixed by the Court. The debtor corporation shall pay a reasonable attorney's fee to the counsel for the petitioning creditors herein for his services in the preparing and filing of the involuntary petition in bankruptcy herein, the amount of said fee to be fixed by the above entitled court. The debtor corporation shall further pay a reasonable fee to the attorneys for the debtor for their services rendered herein, including by way of specification but not by way of limitation, representation of the debtor upon the involuntary proceeding herein, representation of the debtor upon objections to claims, and representation of the debtor in all matters con- [20] cerning plans of arrangement herein, which fee shall be in such sum as may be fixed by the above entitled court.

V.

Upon confirmation of this plan, the debtor shall be placed in possession of all its assets, and shall have all of the title, and exercise all of the rights and powers of a Trustee under the Bankruptcy Act, subject, however, at all times, to the control of the court and to such recommendations, restrictions, terms and conditions as the court may from time to time prescribe; and the debtor may thereupon reopen and recommence the operation of its business. The present Receiver in Bankruptcy of the debtor shall however continue in office until confirmation and performance of this plan of arrangement, for the purpose of instituting and/or prosecuting any and all proceedings necessary or advisable to cause the release or discharge of any of the liens, attachments and/or preferences described in Paragraph III hereof.

VI.

Upon confirmation and performance of this plan of arrangement, the Receiver shall be discharged, all of the remaining assets of every kind or description of the debtor shall be returned unto the debtor free and clear of all liens, encumbrances, claims and demands of every type and description, and your petitioner shall be discharged of all liability and/or claims affected by this plan.

VII.

Upon confirmation of this plan of arrangement by the court, the debtor agrees to execute any and all necessary documents or instruments, and take any and all corporate action required to consummate and effectuate the arrangement thus confirmed.

VIII.

The court shall retain jurisdiction until all of the provisions of this arrangement after its confirmation have been [21] performed.

COMMERCIAL WHOLESALERS, INC.

By Frederick I. Frischling

Secretary and Treasurer [22]

[Verified.]

[Endorsed]: Filed May 5, 1947. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Nov. 24, 1947. Edmund L. Smith, Clerk. [23]

[Title of District Court and Cause]

APPLICATION FOR CONFIRMATION OF FIRST
AMENDED PLAN OF ARRANGEMENT

To the Honorable Hubert F. Laugharn, Referee in Bankruptcy:

Commercial Wholesalers, Inc., a California corporation, respectfully represents:

I.

The arrangement under Chapter XI of the Act of Congress relating to bankruptcy, proposed in the petition filed by it on the 5th day of May, 1947 has been duly accepted in accordance with the provisions of said chapter.

II.

The deposit required by the provisions of said chapter and by the said arrangement has been made.

III.

The provisions of Chapter XI of said Act have been complied with.

IV.

Said arrangement is for the best interests of the creditors. [24]

V.

Said arrangement is fair, equitable and feasible.

VI.

The debtor has not been guilty of any of the acts, or failed to perform any of the duties which would be a bar to the discharge of a bankrupt.

VII.

The proposal of said arrangement and its acceptance are in good faith and have not been made or procured by any means, promises or acts forbidden by said Act.

Wherefore the said Commercial Wholesalers, Inc., a California corporation, prays that said arrangement be confirmed by the Court.

COMMERCIAL WHOLESALERS, INC.

By Frederick L. Frischling

Secretary and Treasurer

[Verified.]

[Endorsed]: Filed May 21, 1947. Hubert F. Laughran, Referee.

[Endorsed]: Filed May 21, 1947. Edmund L. Smith, Clerk. [25]

[Title of District Court and Cause]

ORDER CONFIRMING ARRANGEMENT UNDER
CHAPTER XI

At Los Angeles, in said District, on the 5 day of June, 1947.

I.

The application of Commercial Wholesalers, Inc., a corporation, for confirmation of its first amended plan of arrangement under Chapter XI of the Act of Congress relating to bankruptcy, proposed by said debtor in the petition filed by it on the 5th day of May, 1947, having been heard and duly considered; and due notice of said hearing having been given by mail to all persons entitled thereto; and no one having appeared in opposition to the confirmation of said arrangement; and

It appearing that said arrangement has been duly accepted in accordance with the provisions of said Chapter, and that the deposit required by the provisions of said Chapter and by said arrangement has been deposited with Paul W. Sampsell Receiver herein, as designated by the court, said Paul W. Sampsell having [26] been appointed by this court to receive and distribute the deposit; and

It further appearing and the court being satisfied that the provisions of said Chapter have been complied with; and that said arrangement is for the best interests of the creditors of said debtor; that said arrangement is fair and equitable, and feasible; that said debtor has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of a bankrupt; and that the proposal of said arrangement and its

acceptance are in good faith and have not been made or procured by any means, promises or acts forbidden by said Act; it is therefore

Ordered, that the said first amended plan of arrangement proposed by the debtor, be and the same is in all respects confirmed and approved, and title to all the debtor's property and assets wheresoever situate is hereby revested in the debtor, and it is further

Ordered, that within ten days from the date hereof the debtor may file any objections to the allowance of any claims heretofore or hereafter filed in this proceeding and not heretofore objected to, and shall bring on for hearing any such objections within fifteen days from and after the filing thereof, and shall serve a copy of such objections upon and give notice of such hearings to, the claimants by mail, not less than five days prior to the dates fixed for such hearings, and in the event of the failure of the debtor so to do, any objections to the allowances of the claims affected thereby shall be deemed waived; and it is further

Ordered, that when the amount and/or validity of the claims of creditors are adjudicated as hereinbefore provided, then in event that the amount of money deposited with said Receiver be less than forty-five per cent (45%) of the aggregate amount of all scheduled debts and proved and allowed claims of Classes "A", "B" and "C" (as defined in said first amended plan of arrangement) [27] less the costs and expenses of administration, the debtor shall deposit with said Receiver a sum equal to the difference between said amount on deposit and said forty-five per cent (45%); and if at said time said amount on deposit with said Receiver shall exceed said forty-five

per cent (45%) of said scheduled debts and proved and allowed claims, said Receiver shall pay to said debtor any such excess over said forty-five per cent (45%); and it is further

Ordered, that within ten days after the deposit in the hands of said Receiver may have been increased or decreased as in the preceding paragraph hereof prescribed, said Receiver shall distribute the deposit in his hands in the following manner, to wit:

1. The administration costs and expenses of these proceedings in the sums and to the persons as hereafter ordered by the undersigned Referee shall be paid in full.

2. The priority claimants whose debts are described in said plan of arrangement as Classes "A" and "B", whose claims have been proved and allowed, or whose debts are listed in the schedules of the debtor on file herein, shall be paid in full.

3. General unsecured creditors whose debts are described in said plan of arrangement as Class "C", whose claims have been proved and allowed or whose debts are listed in the schedules of the debtor on file herein, shall be paid forty per cent (40%) of their respective claims or debts; provided that if after making the payments as provided in paragraphs 1 and 2 above, the balance of said deposit remaining in the hands of said Receiver shall be insufficient to pay forty per cent (40%) of the said debts and said claims included in said Class "C", then said Receiver shall distribute said balance of said deposit to said general unsecured creditors whose debts are designated as Class "C" in said plan of arrangement, pro rata in the proportion that their respective debts or claims bear to said balance.

It Is Further Ordered, that the distribution of the money deposited with said Receiver for the purpose of consummating said [28] arrangement shall be made by check to be drawn and signed by said Receiver and countersigned by the undersigned Referee in Bankruptcy; and it is further

Ordered, that these proceedings shall be kept open for the purpose of hearing and determining such objections as may be filed to the claims of creditors herein; and it is further

Ordered, that the debtor be and it is hereby discharged from all of its debts, claims and liabilities except such debts as are by law excepted from discharge; and it is further

Ordered, that all creditors of, and all claimants against the debtor are hereby restrained and enjoined from pursuing or attempting to pursue and from commencing any suits or proceedings at law or in equity against the debtor directly or indirectly upon any right, claim or interest which any such creditor or claimant may have had against the debtor at the time of the commencement of this proceeding excepting only such debts, liabilities and claims as are expressly excepted by law from discharge; and it is further

Ordered, that the balance of the moneys deposited, in excess of the amount required for the foregoing disbursements, be paid to said debtor by check drawn, signed, and countersigned as aforesaid; and it is further

Ordered, upon the making of the payment directed by this order and the disposition of the exceptions to claims herein, this proceeding for an arrangement under Chapter XI of the Bankruptcy Act be, and the same is hereby terminated and closed.

HUBERT F. LAUGHARN

Referee in Bankruptcy

[Endorsed]: Filed Jun. 5, 1947. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Sep. 9, 1947. Edmund L. Smith, Clerk. [29]

[Title of District Court and Cause]

PETITION FOR FINAL DECREE

To the Honorable Hubert F. Laugharn, Referee Presiding in the Above Entitled Matter:

The verified Petition of Commercial Wholesalers, Inc., a California corporation, the above named debtor, respectfully represents:

I.

That said debtor's First Amended Plan of Arrangement, on file herein, has heretofore been confirmed by Order of the above entitled Court, duly and regularly made and entered in the above matter.

II.

That all of the money and consideration required to be deposited and distributed under said Plan of Arrangement and Order confirming same, has heretofore been deposited with Paul W. Sampsell, Receiver of the estate of said debtor, and by said Receiver distributed to the creditors of said debtor in accordance with said First

Amended Plan of Arrangement and the [30] Order confirming same.

III.

That said Paul W. Sampsell, Receiver, has filed herein his Final Report and Account, setting forth in detail his receipts and disbursements of said money, and said Report and Account has been duly and regularly settled, allowed and approved by Order of the above entitled Court duly and regularly entered herein.

IV.

That all objections to the claims of creditors that the debtor intends to or may file pursuant to said First Amended Plan of Arrangement and the Order confirming same, or otherwise, have been filed, heard and determined, and the Orders thereon duly and regularly made by the above entitled Court have become final.

V.

That all of the matters and things required to be done under Section 367, subdivision (2), and subdivision (3), Section 369 and Section 370 of the Bankruptcy Act have been done and completed.

VI.

That by virtue of the distribution of said moneys to the creditors of said debtor in accordance with said First Amended Plan of Arrangement and the Order confirming same, the debts of said creditors have been fully settled, satisfied, paid and discharged. Therefore, said creditors, their heirs, executors, administrators, successors and assigns should be forever enjoined and debarred from pursuing or attempting to pursue, commencing, prosecuting or maintaining any actions, suits or proceedings at law or in equity, against the debtor, its successors, predecessors or assigns, based upon any debt or claim

scheduled or filed herein, excepting only debts excepted by law from discharge. [31]

VII.

That said Paul W. Sampsell, Receiver of the estate of said debtor, should be discharged, and the estate of said debtor, Commercial Wholesalers, Inc., a California corporation, should be closed.

Wherefore petitioner prays for a Final Decree of this Court:

(1) That all creditors of Commercial Wholesalers, Inc., a California corporation, whose debts or claims have been scheduled or filed herein, their heirs, executors, administrators, successors and assigns, be forever enjoined and debarred from pursuing or attempting to pursue, commencing, prosecuting or maintaining any actions, suits or proceedings at law or in equity, against the debtor, its successors, predecessors or assigns, based upon any such debt or claim scheduled or filed herein, excepting only debts excepted by law from discharge.

(2) That Paul W. Sampsell, Receiver of the estate of said debtor, be discharged.

(3) That the estate of Commercial Wholesalers, Inc., a California corporation, debtor, be closed.

(4) For such other and further relief as is just.

COMMERCIAL WHOLESALERS, INC.

By Frederick L. Frischling

Secretary and Treasurer

Petitioner

ALFRED GITELSON

By Robert R. Ashton, of Counsel

Attorney for Petitioner [32]

Paul W. Sampsell, Receiver herein, by and through his attorneys of record does hereby waive notice of hearing of the within Petition.

CRAIG & WELLER

By Frank C. Weller

Attorneys for Receiver

[Verified.]

[Endorsed]: Filed Nov. 12, 1947. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Nov. 24, 1947. Edmund L. Smith, Clerk. [33]

[Title of District Court and Cause]

FINAL DECREE

Upon reading and filing the verified Petition of Commercial Wholesalers, Inc., a California corporation, the above named debtor, praying for a Final Decree herein, and good cause appearing therefor, and the Court being fully advised in the premises, now, therefore, it is

Ordered, Adjudged and Decreed:

That all of the debts of said Commercial Wholesalers, Inc. which have been scheduled herein or upon which claims have been filed herein, have been fully settled, satisfied, paid and discharged.

That all creditors of said Commercial Wholesalers, Inc., a California corporation, debtor in the above entitled mat-

ter, whose debts or claims against said debtor have been scheduled or filed herein, their heirs, executors, administrators, successors and assigns, be and each of them are hereby forever enjoined and debarred from pursuing or attempting to pursue, commencing, [34] prosecuting or maintaining any actions, suits or proceedings at law or in equity, against the debtor, its successors, predecessors or assigns, based upon any such debt or claim, scheduled or filed herein, excepting only debts excepted by law from discharge.

That Paul W. Sampsell, Receiver of the estate of said debtor, be and he is hereby discharged.

That the estate of Commercial Wholesalers, Inc., a California corporation, debtor, be and the same is hereby closed.

Dated at Los Angeles, California, this 12 day of November, 1947.

HUBERT F. LAUGHARN

Referee

[Endorsed]: Filed Nov. 12, 1947. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Nov. 18, 1947. Edmund L. Smith, Clerk. [35]

[Title of District Court and Cause]

PETITION FOR RECONSIDERING AND RE-
FORMING FINAL DECREE MADE ON NO-
VEMBER 12, 1947

To Hubert F. Laugharn, Referee:

Comes now the Investors Commercial Corporation, a corporation, and shows to this court that the Kisco Products, Inc., a corporation, a creditor of Commercial Wholesalers, Inc., filed its claim in the above entitled matter for the sum of \$5732.80, which claim was duly approved and a dividend of \$2225.28 payable to creditor was paid thereon, leaving a balance due of \$3507.52;

That said account has been duly assigned and transferred to your petitioner herein, who is the present owner and holder thereof and is interested in the collection of the balance due on said claim; that said claim was represented by merchandise originally sold and delivered by said Kisco Products, Inc., to the Allied Wholesale & Distributing Company, a copartnership, which indebtedness was thereafter assumed by said Commercial Wholesalers, Inc.;

That on June 5, 1947 an order was made herein confirming the arrangements submitted by said Commercial Wholesalers, Inc. under Chapter XI of the Bankruptcy Act of the United States, which order, among other things, provided: [36]

“That all creditors of and all claimants against the debtor are hereby restrained and enjoined from pursuing or attempting to pursue, or from commencing

ing any suits or proceedings at law or in equity against the debtor, directly or indirectly, upon any right, claim or interest which any such creditor or claimant may have had against the debtor at the time of the commencement of this proceeding, excepting only such debts, liabilities and claims as are expressly excepted by law from discharge;

“That the debtor be and it is hereby discharged from all of its debts, claims and liabilities, except such debts as are by law excepted from discharge.”

That thereafter a final decree was made herein dated November 12, 1947 wherein, among other things, it was ordered:

“That all creditors of said Commercial Wholesalers, Inc., a corporation, debtor in the above entitled matter, whose debts or claims against said debtor have been scheduled or filed herein, their heirs, executors, administrators, successors and assigns be, and each of them, are hereby forever enjoined and debarred from pursuing or attempting to pursue, commencing, prosecuting or maintaining any actions, suits or proceedings at law or in equity against the debtor, its successors, predecessors, or assigns, based upon any such debt or claim scheduled or filed herein, excepting only such debts, excepted by law from discharge.”

That the above order made on June 5th, 1947 confirming arrangements for settlement and discharge of claims under Chapter XI in which all creditors had notice before the acceptance of [37] dividends merely provides that such creditors were restrained and enjoined from pur-

suing, or attempting to pursue, or from commencing any suits or proceedings at law or in equity against the debtor, directly or indirectly, upon any right, claim or interest and did not provide for such injunction or debarring of creditors from bringing or maintaining suits and proceedings against predecessors of said alleged bankrupt and debtor, and said creditors were not aware of the fact that by accepting dividends in said proceedings that they were going to be debarred and enjoined from pursuing any rights they had, or may have had, against predecessors of said alleged bankrupt and debtor, and that your petitioner believes that said final decree of November 12, 1947, wherein it attempted to provide for injunction against creditors from maintaining or pursuing any actions they had, or might have had, against the predecessors of the alleged bankrupt and debtor, was made by inadvertence, and it was not the intention of this court that creditors should be so enjoined and debarred.

Wherefore your petitioner prays that an order may be had herein for reconsidering and reforming said final decree of November 12, 1947, by eliminating and deleting the word "predecessors" therefrom.

CATLIN & CATLIN

By Frank D. Catlin

Attorneys for Investors Commercial Corporation,
a Corp.

[Endorsed]: Filed Nov. 25, 1947. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Jan. 14, 1948. Edmund L. Smith, Clerk. [38]

[Title of District Court and Cause]

ORDER TO SHOW CAUSE

Upon reading and filing of a petition of Investors Commercial Corporation, a corporation, upon the application of Catlin & Catlin, its attorneys, and good cause being shown therefor, It Is Ordered that the above estate is reopened and the file returned from the clerk,

It Is Hereby Ordered that Commercial Wholesalers, Inc., a corporation, the alleged bankrupt and debtor, appear before this court in the court room of Hon. Hubert F. Laugharn, Referee in Bankruptcy, 340 Federal Building, Los Angeles, California, on the 4 day of December, 1947 at the hour of 10 o'clock A. M. and to then and there show cause, if any it has, why said final decree made herein on November 12th, 1947, should not be reconsidered and reformed as per the prayer of the petition of Investors Commercial Corporation, a corporation, and

It Is Further Ordered that a copy of said petition and a copy of this order be served upon the Commercial Wholesalers [39] Inc., a corporation, the Alleged Bankrupt and debtor, by serving its attorney, Alfred Gitelson.

Dated: November 25, 1947.

HUBERT F. LAUGHARN

Referee in Bankruptcy

[Endorsed]: Filed Nov. 25, 1947. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Jan. 14, 1948. Edmund L. Smith, Clerk. [40]

[Title of District Court and Cause]

MODIFICATION OF FINAL DECREE

This matter coming up for hearing on the 4th day of December, 1947, before the Honorable Hubert Laugharn, Referee, upon his order to show cause why the final decree made herein on November 12, 1947, should not be reconsidered and reformed, and it appearing that due notice was given in accordance with said Order to Show Cause, and Catlin & Catlin, by Frank D. Catlin, Esq., appearing as attorney for Investors Commercial Corporation, and Alfred Gitelson, by Robert Ashton, Esq., appearing as attorney for the Commercial Wholesalers, Inc., Alleged Bankrupt and Debtor, and after hearing arguments of counsel and being fully advised in the premises, and having taken the matter under consideration the Court finds that proceedings under Chapter XI of the Bankruptcy Act of the United States does not discharge guarantors, sureties or predecessors of said alleged Bankrupt or Debtor, and the word "predecessors" appearing on lines 2 and 3 on page 2 of said final order dated November 12, 1947, was inserted by error and inadvertence, and [41]

It Is Therefore Ordered, Adjudged and Decreed that the final decree heretofore made and filed on November 12th, 1947, be and the same is hereby modified and reformed in the following particulars:

That the word "predecessors" contained at the end of line 2 and the beginning of line 3 on page 2 of said de-

cree be stricken and deleted and eliminated therefrom and said paragraph in which said word "predecessors" was contained, read as follows:

"That all creditors of said Commercial Wholesalers, Inc., a California corporation, debtor in the above entitled matter, whose debts or claims against said debtor have been scheduled or filed herein, their heirs, executors, administrators, successors and assigns be, and each of them are hereby forever enjoined and debarred from pursuing or attempting to pursue, commencing, prosecuting or maintaining any actions, suits or proceedings at law or in equity against the debtor, its successors or assigns, based upon any such debt or claim scheduled or filed herein, excepting only debts excepted by law from discharge."

Dated December 24, 1947.

HUBERT F. LAUGHARN

Referee in Bankruptcy [42]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Dec. 24, 1947. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Jan. 14, 1948. Edmund L. Smith, Clerk. [43]

[Title of District Court and Cause]

PETITION FOR ORDER EXTENDING TIME
WITHIN WHICH TO PETITION FOR RE-
VIEW

To the Honorable Hubert F. Laugharn, Referee in Bankruptcy, Presiding in the Above Entitled Cause:

Your petitioner, Commercial Wholesalers, Inc., a corporation, the above named debtor, hereby petitions for an Order extending time within which it may petition for review, and alleges as follows:

I.

That on December 24, 1947, there was made and entered in the above entitled cause an order entitled "Modification of Final Decree". That your petitioner desires to take a review of said Order, but has been unable to file said petition for review within the ten day period prescribed by the Bankruptcy Act, by reason of the facts hereinafter set forth.

II.

Your petitioner's counsel, Alfred Gitelson, did not receive any notice of the entry of said Order until December 29, 1947, when he received a copy thereof in the mail; at which time five of the ten days permitted by law had already expired.

III.

That after receiving said notice, said Alfred Gitelson was unable to convey the information to your petitioner by reason of the fact that Frederick I. Frischling, the

Secretary-Treasurer of the debtor corporation, and the only officer of said corporation available in the City of Los Angeles was ill, at home in bed. Your petitioner did not, by reason of said facts, receive notice of the entry of said order until December 31, 1947.

IV.

That the office of your petitioner's counsel, to wit, Mr. Alfred Gitelson, was closed from the afternoon of December 31, 1947 until the morning of January 5, 1948, by reason of the New Year's holidays.

V.

That your petitioner has now caused to be prepared a petition for review of said order, but has not had sufficient time to file the same within the ten day period prescribed by the Bankruptcy Act.

Wherefore, your petitioner prays for an order extending the time within which your petitioner may file a petition for review of said order entitled "Modification of Final Decree", entered herein on December 24, 1947, to and including January 6, 1948.

COMMERCIAL WHOLESALERS, INC.,
a corporation

By Frederick I. Frischling

Debtor

ALFRED GITELSON

By Robert R. Ashton, of Counsel

Counsel for Petitioner [45]

ORDER

Good Cause Appearing Therefor, it is hereby ordered that the time within which Commercial Wholesalers, Inc., a corporation, the above named debtor, may file herein a petition for a review of that certain order entered herein on December 24, 1947, entitled "Modification of Final Decree" to be and the same is hereby extended to January 6, 1948.

Dated: January 5, 1948.

HUBERT F. LAUGHARN

Referee [46]

[Verified.]

[Endorsed]: Filed Jan. 5, 1948. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Jan. 14, 1948. Edmund L. Smith, Clerk. [47]

[Title of District Court and Cause]

PETITION FOR REVIEW OF REFEREE'S ORDER
BY JUDGE

To the Honorable Hubert F. Laugharn, Referee in Bankruptcy, Presiding in the Above Entitled Cause:

Your petitioner, Commercial Wholesalers, Inc., a corporation, the above named debtor, hereby petitions for review by the Judge of your Order made and entered on the 24th day of December, 1947, and that the same be vacated and set aside, and alleges as follows:

I.

That your petitioner is the debtor in the above entitled matter.

II.

That on November 12, 1947, the Honorable Hubert F. Laugharn, Referee presiding in the above entitled matter, made and entered herein a final decree. No review of said final decree was taken, and the same became final ten days after the entry thereof, to wit, on November 22, 1947. [48]

III.

That thereafter, and on November 25, 1947, Investors Commercial Corporation, a corporation, one of the debtor's creditors, filed a petition herein entitled "Petition for Reconsidering and Reforming Final Decree Made on November 12, 1947", upon which Petition an Order, dated November 25, 1947, was made herein by said Referee Hubert F. Laugharn, whereby it was ordered that this estate was reopened, and that the above named debtor appear before said Referee on December 4, 1947 and show cause why said final decree should not be reconsidered and reformed by eliminating and deleting therefrom the word "predecessors".

IV.

Said Order to Show Cause came on regularly to be heard and was heard by said Referee on December 4, 1947, and thereafter and on the 24th day of December, 1947, said Referee made and entered an order herein entitled "Modification of Final Decree", a true and correct copy of which is hereto attached, marked Exhibit "A", and made a part hereof by reference.

V.

That the above entitled matter was closed on the 12th day of November, 1947.

VI.

That said Order is erroneous for the following reasons, to wit:

1. That said final decree was made and entered herein on November 12, 1947, and no review was taken thereof so that said order became final on November 22, 1947. Therefore, said Referee had no jurisdiction, power or authority thereafter to reconsider, reform, modify and/or amend said final decree.

2. Said final decree was correct as originally made and [49] entered herein on November 12, 1947, for the reason that the debtor's First Amended Plan of Arrangement, which was confirmed herein, provided that the unsecured debts of the debtor should be settled and satisfied by payment of the amounts set forth in said plan. Therefore said plan, having been fully carried out by the debtor, it constituted an accord and satisfaction of said debts between the debtor and its creditors, which acted to discharge the debtor's predecessors or joint debtors from payment of said debts.

3. That the said Referee had no jurisdiction, power or authority to reopen this estate on November 25, 1947, or at any other time for the reason that said estate had, prior to said time, been closed.

Wherefore, your petitioner prays for a review of said Order by the Judge, and that the said Order be vacated and set aside.

Dated: January 5, 1948.

COMMERCIAL WHOLESALERS, INC.,
a California corporation,

By Frederick I. Frischling

Petitioner

ALFRED GITELSON

By Robert R. Ashton, of Counsel
Counsel for Petitioner

EXHIBIT A

In the District Court of the United States
Southern District of California, Central Division

In the Matter of Commercial Wholesalers, Inc., a corporation, Alleged Bankrupt. No. 44685 O'C.

MODIFICATION OF FINAL DECREE

This matter coming up for hearing on the 4th day of December, 1947, before the Honorable Hubert Laugharn, Referee, upon his order to show cause why the final decree made herein on November 12, 1947, should not be reconsidered and reformed, and it appearing that due notice was given in accordance with said Order to Show Cause, and Catlin & Catlin, by Frank D. Catlin, Esq., appearing as attorney for Investors Commercial Corporation, and Alfred Gitelson, by Robert Ashton, Esq., appearing as attorney for the Commercial Wholesalers, Inc., Alleged Bankrupt and Debtor, and after hearing arguments of counsel and being fully advised in the premises, and having taken the matter under consideration the Court finds that proceedings under Chapter XI of the Bankruptcy Act of the United States does not discharge guarantors, sureties or predecessors of said alleged Bankrupt or Debtor, and the word "predecessors" appearing on lines 2 and 3 on page 2 of said final order dated November 12, 1947, was inserted by error and inadvertence, and [50]

It Is Therefore Ordered, Adjudged and Decreed that the final decree heretofore made and filed on November 12th, 1947, be and the same is hereby modified and reformed in the following particulars:

That the word "predecessors" contained at the end of line 2 and the beginning of line 3 on page 2 of said decree be stricken and deleted and eliminated therefrom and said paragraph in which said word "predecessors" was contained, read as follows:

"That all creditors of said Commercial Wholesalers, Inc., a California corporation, debtor in the above entitled matter, whose debts or claims against said debtor have been scheduled or filed herein, their heirs, executors, administrators, successors and assigns, be, and each of them are hereby forever enjoined and debarred from pursuing or attempting to pursue, commencing, prosecuting or maintaining any actions, suits or proceedings at law or in equity against the debtor, its successors or assigns, based upon any such debt or claim scheduled or filed herein, excepting only debts excepted by law from discharge."

Dated December 24, 1947.

HUBERT F. LAUGHARN

Referee in Bankruptcy [51]

[Verified.]

[Endorsed]: Filed Jan. 5, 1948. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Jan. 14, 1948. Edmund L. Smith, Clerk. [52]

[Title of District Court and Cause]

CERTIFICATE ON REVIEW

To the Honorable J. F. T. O'Connor, Judge of the United States District Court for the Southern District of California, Central Division:

I, Hubert F. Laugharn, Referee in Bankruptcy to whom the above entitled matter has been referred, do hereby certify as follows:

An order was made herein on June 5, 1947 confirming the Plan of Arrangement of the debtor. Thereafter a creditor, Investors Commercial Corporation, assignee of Kisco Products Inc., contended that it could proceed against others who it contended were liable on the same obligation which was dealt with under the Plan of Arrangement which provided for payment of 45% on its general claims. This creditor assignor received the said agreed percentage in the arrangement proceedings.

Upon the conclusion of the debtor proceedings, the debtor thereupon presented a Final Decree which was signed on November 12, 1947. The same was presented ex parte and without notice to this or any other creditors. This Final Decree restrained and enjoined [53] creditors from prosecuting or maintaining any action against the debtor, its successors, predecessors or assigns, based upon any such debts scheduled or filed herein.

Thereupon the creditor filed before the Referee a Petition for Reconsidering and Reforming Final Decree Made on November 12, 1947, and the Referee made an order reopening the proceeding and an order to show cause was issued requiring the debtor to show cause why the said

Final Decree should not be reconsidered, and, in effect, that portion thereof above underscored be deleted.

The Order to Show Cause came on for hearing and the Debtor and the creditor and their respective attorneys appeared, and thereafter a Modification of Final Decree was made on December 24, 1947, which in effect deleted the said underscored portion of the original Final Decree above referred to.

Thereafter there was duly filed by the Debtor the Petition for the Review thereof.

My reasons for making the order were as follows: An inspection of the Plan of Arrangement revealed no express provision releasing the liability of others than the debtor. The so-called Final Decree of November 12, 1947 could add nothing to the Plan of Arrangement, i. e., the contract between the debtor and its creditors. Its presentation with the questioned inclusion was no doubt prompted by the threatened action of the creditor against others than the debtor. It was ex parte and without notice to the creditors and served no other useful or statutory purpose other than to discharge the Receiver. And the inclusion of restraining action by the creditors against persons other than the debtor was an attempted determination of the legal right of creditors to proceed against others than the debtor.

As to the legal rights of the debtor in the premises, I determined that the Plan of Arrangement neither by express terms [54] nor legal intendment released or discharged the liability against third persons.

American Improvement Co. v. Lilienthal, 43 Cal. App. 80.

8 C. J. S., 1497-1546-1559.

Collier on Bankruptcy, 14th Ed., Vol. 1, pages 1522-30.

Collier on Bankruptcy, 14th Ed., Vol. 8, page 1273 and Supplement.

Klipstein & Company v. Lipschitz, 10 A. B. R. (N. S.) 600.

Matter of American Paper Co., 42 A. B. R. 716, 719.

Matter of Kornbluth, 23 A. B. R. (N. S.) 347.

Schram v. Perkins, 38 Fed. Supp. 404.

The order being ex parte, the proper practice for the objecting creditor was to move to set the same aside and not review thereof. Doyle v. Ponsford, 53 A. B. R. (N. S.) 319 Fed. 2d

Although the time for filing a Petition for Review to the said Final Decree had expired under Section 39c of the Bankruptcy Act, under the authority of Pfister v. Northern Illinois Finance Corp., 63 S. Ct. 133, 51 A. B. R. (N. S.) 99, 1942, and In the Matter of Thomas Nugent Crofton, Bankrupt, #1427, D. C., So. District of California, Southern Division (Opinion by Judge Paul J. McCormick), and in this particular case, since the rights of the parties had not changed, I would have granted the Review beyond the time. Furthermore since the objectional portion of the Final Decree was included in my order through inadvertence and without notice to the creditors, I took the view that I should (upon hear-

ing and notice to the debtor), delete it and leave the parties to their legal rights in the state courts.

The inclusion of the restraint against others than the Debtor in the Final Decree of November 12, 1947 was ex parte and without consideration of the vested and contractual rights of [55] creditors and when its effect was called to my attention as being a determination thereof and further that my order would be set up before other courts as a determination of the right, or rather a bar thereto, I determined to set the same aside and hear the parties on their respective rights in the premises.

There is included and forwarded herewith the following:

- (1) Petition for Reconsidering and Reforming Final Decree Made on November 12, 1947.
 - (2) Order to Show Cause.
 - (3) Modification of Final Decree.
 - (4) Petition for Review of Referee's Order by Judge.
- Dated: January 14, 1948.

Respectfully submitted,

HUBERT F. LAUGHARN

Referee in Bankruptcy

[Endorsed]: Filed Jan. 14, 1948. Edmund L. Smith, Clerk. [56]

[Title of District Court and Cause]

STATEMENT OF FACTS AND POINTS AND AUTHORITIES OF COMMERCIAL WHOLESALEERS, INC., A CORPORATION, DEBTOR, RE PETITION FOR REVIEW OF REFEREE'S ORDER BY JUDGE

To the Honorable J. F. T. O'Connor, Judge of the United States District Court, Southern District of California, Central Division:

Comes now Commercial Wholesalers, Inc., a corporation, Debtor in the above entitled matter, and for a Statement of Facts and Points and Authorities in support of its Petition for Review of Referee's Order made and entered on the 24th day of December, 1947, modifying the Final Decree herein, respectfully submits as follows:

STATEMENT OF FACTS

On November 12, 1947, the Referee herein made and entered herein the Final Decree. No review of said Final Decree was ever taken. [57]

That thereafter, and on said 12th day of November, 1947, the Referee herein closed this entire matter.

That thereafter, and on November 25, 1947, Investor's Commercial Corporation, a corporation, one of the debtor's creditors, filed a petition herein entitled "Petition for Reconsidering and Reforming Final Decree Made on November 12, 1947", upon which petition the Referee herein made an order dated November 25, 1947, whereby said Referee ordered that this estate was re-opened, and that the above named debtor appear before

said Referee on December 4, 1947, and show cause why said final decree should not be reconsidered and reformed by eliminating and deleting therefrom the words "predecessors".

Said Order to Show Cause came on regularly to be heard and was heard by said Referee on December 4, 1947, and thereafter, and on the 24th day of December, 1947, said Referee made and entered an order herein entitled "Modification of Final Decree", whereby and under the terms of which order said Referee modified and reformed said Final Decree by deleting therefrom the word "predecessors" contained at the end of line 2 and the beginning of line 3 on page 2 of said Final Decree.

The First Amended Plan of Arrangement filed herein May 5, 1947, which was thereafter confirmed by order of the Referee prior to the making and entering of said Final Decree, provided in effect that all of the debts of the debtor that were unsecured shall be settled and satisfied by payment to the holders thereof of forty per cent of their respective claims.

I.

THE REFEREE HAD NO JURISDICTION TO ORDER THAT THIS ESTATE WAS REOPENED ON NOVEMBER 25, 1947.

The Referee had no authority, power or jurisdiction to order that this estate was reopened on November 25, 1947, since he had previously closed the case on November 12, 1947. The Referee's [58] authority to act as a Court of Bankruptcy under an order of general reference

in a particular case ceases after he has made his report and the case is closed.

Volume 2, Collier on Bankruptcy (14th Ed.), page 1415.

Heywood-Wakefield Co. v. Small (C. C. A., 1st Cir.), 36 Am. B. R. (N. S.) 965, 96 Fed. (2d) 496.

Therefore, any petition to reopen the estate should have been directed to the District Judge, who might grant the petition or not, as he saw fit, and if he granted it, thereafter re-refer the case to a Referee.

Heywood-Wakefield Co. v. Small (C. C. A., 1st Cir.), 36 Am. B. R. (N. S.) 965, 96 Fed. (2d) 496.

Pollack v. Meyer Bros. Drug Co. (C. C. A., 8th Cir.), 36 Am. B. R. 835, 233 Fed. 861.

Since the Referee had no jurisdiction to reopen the case, his order so purporting to reopen the case was void and of no force or effect. Since he had no such jurisdiction, and since his purported order was void and a nullity, his subsequent order herein made pursuant to said order purporting to reopen the case, which was made on December 24, 1947, purporting to modify said Final Decree, and which is the subject of this petition for review, was wholly void for lack of jurisdiction of the Referee to make or enter such an order.

II.

THE REFEREE HAD NO JURISDICTION, POWER OR AUTHORITY TO RECONSIDER, REFORM, MODIFY OR AMEND SAID FINAL DECREE

The rule in the Circuit Court of Appeals, Ninth Circuit, is well settled that once a Referee has entered an order, the Referee's power over the order is ended. The remedy of review [59] is exclusive, and the Referee may not review or change the order.

In re Faerstein, 58 Fed. (2d) 942.

In the Faerstein case cited above, the Referee made and entered a "Turnover Order" and no review thereof was sought. Nine days thereafter the Referee made an order that the Turnover Order be set aside and annulled. On review, the order setting aside and annulling the Turnover Order was reversed. On appeal to the Circuit Court, wherein the District Court was affirmed, the Court propounded this question:

"The issue concisely is, Did the Referee have the power, after having made and entered final findings and conclusions, and after the 'Turnover Order' was issued, to set the same aside, or was the exclusive power vested by law and rule in the United States District Judge to review such order?"

In holding that a Referee had no power to amend his order once it was entered, the Circuit Court said in part:

"Referees are invested with certain powers, 'subject always to a review by the judge.' Section 66, title 11, USCA. The referee has no independent judicial authority. He is not a distinct court, and has no power not conferred by order of reference,

by law or general orders. 'The districts courts of the United States in the several States * * * are made courts of bankruptcy.' 11 USCA, Section 11. A court is said by Blackstone to be a vested judicial power to adjudicate issues between contending factors, and is composed of the actor, or plaintiff; the reus, or defendant; and the judex, the judicial power which examines the truth of the contending parties and applies the remedy. A [60] referee is an instrumentality of the Court, with limited powers. His jurisdiction is defined by section 66, title 11, U.S.C. A., *supra*, and his duties are given in section 67. Neither of these sections gives him the power to review and set aside the order made, and in issue on this appeal.

"General Order No. 27 of the Supreme Court (11 USCA, Section 53) provides that, when a review is sought of any order of the referee, a petition shall be filed with the referee setting forth the error complained of and the referee shall certify to the United States District Judge the question presented, a summary of the evidence, and finding and the order of the referee thereon. The procedure is specific and clearly stated. Rule 84 of the trial court requires that a petition for review, as provided in General Order 27, *supra*, must be filed with the referee within ten days from the date of notice of such order.

"When an order is entered, the referee's power over the order is ended. The remedy is exclusive and he may not review or change the order. In *re Russell* (D. C.), 105 F. 501; In *re Wister & Co.* (D. C.), 232 F. 898; also, In *re Greek Mfg. Co.*

(D. C.), 164 Fed. 211; *In re Marks* (D. C.), 171 F. 281; *In re Avoca Silk Co.* (D. C.), 241 F. 607; *Matter of J. W. Renshaw's Sons, Bankrupt* (D. C.), 3 F. (2d) 75; *Matter of Wm. L. David* (C. C. A.), 33 F. (2d) 748; *David vs. Hubbard*, 280 U. S. 514, 50 S. Ct. 19, 74 L. Ed. 585.

"That the procedure of review is plainly defined and power limited in the interest of regu- [61] larity and for the common good is clearly stated by Judge Sawtelle of this court, sitting as District Judge, in *Re Octave Mining Co.* (D. C.), 212 Fed. 457, 458, as follows: 'It is manifest that the mode prescribed by General Order 27 is the only manner in which the decisions of the referee may be reviewed. * * *'"

That the foregoing case is still the law in this District is not open to dispute, in view of the fact that it was cited with approval in the recent case of

Grandee v. Arizona Wax Paper Co. (C. C. A., 9th Cir.), 90 Fed. (2d) 801.

III.

THE ORDER OF DECEMBER 24, 1947, AMENDING THE FINAL DECREE WAS ERRONEOUS BECAUSE THE FIRST AMENDED PLAN OF ARRANGEMENT CONSTITUTED AN ACCORD AND SATISFACTION, EXTINGUISHING THE OBLIGATIONS OF THE CREDITORS

The First Amended Plan of Arrangement herein provided that the unsecured debts of the debtor should be settled and satisfied by payment to the holders thereof of forty per cent of their respective claims. Since a

Final Decree was admittedly entered herein, it cannot be denied but that the Plan of Arrangement was consummated and the creditors paid their forty per cent of their claims as provided in the Plan. That being true, the original obligations became extinguished by reason of the accord and satisfaction.

An accord is an agreement to accept, in extinction of an obligation, something different from or less than that to which the person agreeing to accept is entitled.

California Civil Code, Section 1521. [62]

Though the parties to an accord are bound to execute it, yet it does not extinguish the obligation until it is fully executed.

California Civil Code, Section 1522.

Acceptance by the creditors of the consideration of the accord extinguishes the obligation, and is called satisfaction.

California Civil Code, Section 1523.

In the case of *Russell v. Riley, etc.*, 82 Cal. App. 728, at 737, the Court said:

“If the consideration be considered as one of accord and satisfaction, then the rule is well settled that where an agreement to accept in full payment a sum less than the amount in dispute is shown to have been fully executed by the payment and acceptance of the lesser sum, the original obligation is thereby extinguished.”

In the *Estate of Connell*, 121 Cal. App. 703, Mrs. Connell and her deceased husband were jointly liable on an obligation to the plaintiff. Plaintiff filed suit against Mrs.

Connell individually (she being administratrix of her deceased husband's estate) and also filed a claim in the estate for the same obligation. The plaintiff recovered judgment against Mrs. Connell individually, and subsequently accepted from her one-half of the judgment, plus her agreement not to appeal from the judgment, in payment and satisfaction of the judgment. Later, plaintiff filed this action against the estate for the balance of the claim. In holding that the accord with Mrs. Connell extinguished the debt and released the estate of Mr. Connell from further payment to [63] the plaintiff, the Court said in part:

“Had the judgment in the civil action been paid in full, appellant could not have recovered anything under the claim filed in the estate. Here we have a situation in which, by accord and satisfaction, the consideration being the payment of one-half of the amount of the judgment on or before the date specified, and the further consideration that the judgment debtor would not prosecute an appeal, the judgment was satisfied, and, by the agreement, the transaction included a settlement not only of the judgment, but of the note and claim in the estate. We hold that, under these conditions, appellant ceased to have any further rights to the recovery of money by reason of the note, and that the settlement extinguished the claims in the estate as fully as though judgment had been paid in full.”

In the case of *B & W Engineering Co. vs. Bean*, 23 Cal. App. 164, at 170, the Court said in part:

“The phrase ‘accord and satisfaction’ as it is known and applied in the law means the substitution

of a new agreement for and in satisfaction of a pre-existing agreement between the same parties. More minutely defined, an agreement of accord and satisfaction is one whereby one of the parties having a right of action against the other, upon a claim arising out of an existing agreement, agrees to accept from the other party something in satisfaction of said right of action different from and usually less than that which might be [64] recovered upon the original obligation (Civil Code, Section 1521). The effect of such agreement when executed is to extinguish the antecedent liability (Civil Code, Section 1523)."

In the case of Keeling Corp., Ltd. vs. Pacific Products, Inc., 138 Cal. App. 180, the District Court of Appeal held as follows:

"There is a distinction between a discharge in bankruptcy and a composition settlement and the consequences which flow therefrom. A composition with creditors partakes of the nature of a contract, in a measure superseding and outside of the bankruptcy proceedings. It is an offer and acceptance, and the respective rights of the bankrupt and the creditors are fixed by the terms of the offer upon its confirmation. Whether, therefore, a discharge in bankruptcy merely bars the remedy or completely extinguishes the legal obligation is a matter of academic interest, as the composition agreement by its express terms provided the sum paid was 'in full of such creditors claims' against the corporation. The stockholders were released therefor not by a discharge in bankruptcy but under an express contract. This

agreement completely extinguished and wiped out the entire legal obligation of the company. It has been universally held that the constitutional liability of stockholders of a corporation for its debts is released by the full performance of a volun- [65] tary composition agreement between the corporation and its creditors (citing *San Jose Savings Bank v. Pharis*, 58 Cal. 380).

“Whatever satisfies or extinguishes the debt as to the corporation, extinguishes also the liability of the stockholders, for the reason that there can be only one satisfaction of the debt (*Young v. Rosenbaum*, 39 Cal. 646, 654; 6a Cal. Jur. 1018; *O’Connell Shoe Co. v. Benson Cooperative Mechanical Co.*, 175 Minnesota, 382). The statutory liability of a stockholder is dependent upon the actual existence of an indebtedness (*Ellsworth v. Bradford*, 186 Cal. 316). Here, as above indicated, the entire indebtedness has been discharged, satisfied and wiped out. There was, therefore, no debt upon which the alleged statutory liability could be based.”

See also to the same effect:

San Jose Savings Bank v. Pharis, 58 Cal. 380; and
Young v. Rosenbaum, 39 Cal. 646.

In summary, the Debtor contends:

(1) The Referee had no jurisdiction, power or authority to reopen this case after it had been closed, and his subsequent order of December 24, 1947 based upon

the reopening of the case was void for lack of jurisdiction.

(2) Having once entered his Final Decree herein, the Referee had no jurisdiction, power or authority thereafter to reconsider, reform, modify or amend said Final Decree, and his [66] order of December 24, 1947 purporting so to do should be vacated, and set aside.

(3) The order of December 24, 1947, deleting the word "predecessors" from the Final Decree was erroneous because the First Amended Plan of Arrangement providing for the settlement and satisfaction of the debtor's obligations by payment of a percentage thereof to its creditors constituted an accord and satisfaction between the debtor and its creditors; and the provision in the Final Decree prohibiting the creditors from prosecuting actions upon extinguished liabilities was lawful and proper.

Respectfully submitted,

ALFRED GITELSON

By Robert R. Ashton, of Counsel
Counsel for Debtor [67]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jan. 19, 1948. Edmund L. Smith,
Clerk. [68]

[Title of District Court and Cause]

[OPINION]

Alfred Gitelson, Esquire, representing the Debtor
Los Angeles, Calif.

Francis F. Quittner, Esquire, and Robert E. Ross-
kopf, Esquire, representing the Petitioning Creditors,
Los Angeles, Calif.

Catlin & Catlin, attorneys for the Respondent, In-
vestors Commercial Corporation, a corporation, Los
Angeles, Calif.

O'Connor, J. F. T. Judge.

Quaere: Where a Referee Has Made an Order or De-
cree Closing a Case, Is a Petition to Reopen the Case
Properly Presentable to Him for Determination or
Should It Be Presented to the District Judge?

After the Referee had closed this case by a Final De-
cree on November 12, 1947, the Investor's Commercial
Corporation, a corporation, one of the debtor's creditors,
on November 25th, 1947, filed its Petition for Recon-
sidering and Reforming the Final Decree made on No-
vember 12, 1947, directly with the Referee, in accordance
with Local Court Rule 208(a), amended by this court
on September 15, 1947, *infra*, and, pursuant thereto, the
order of reopening was made on November 25, 1947.

The Petitioner for Review, Commercial Wholesalers,
Inc., a California corporation, Debtor, while it does not
seriously deny the right of the Judge, as this word is
hereinafter defined, to reopen the Estate for good cause
shown, takes the position that, inasmuch as the Referee
had closed [69] this case by his final decree on Novem-

ber 12, 1947, he had no authority, power or jurisdiction to order this estate reopened on November 25, 1947, citing Volume 2, Collier on Bankruptcy (14th Ed.), page 1415, and *Heywood-Wakefield Co. v. Small* (C. C. A., 1st Cir., 36 Am. B. R. (N. S.) 965, 96 Fed. (2d) 496, to the effect that a Referee's authority to act as a court of bankruptcy under an order of general reference in a particular case ceases after he has made his report and the case is closed; and, therefore, that any petition to reopen the estate should have been directed to the district judge in the first instance, who might grant the petition or not, as he saw fit; and, if he granted it, thereafter refer the case to a referee, citing *Heywood-Wakefield Co. v. Small* (C. C. A., 1st Cir.), 36 Am. B. R. (N. S.) 965, 96 Fed. (2d) 496; and *Pollock v. Meyer Bros. Drug Co.* (C. C. A., 8th Cir.), 36 Am. B. R. 835, 233 Fed. 861.

The *Heywood-Wakefield Co. v. Small* case (*supra*), was decided on April 14, 1938, prior to the amendment of the Bankruptcy Act by the Chandler Act of June 22, 1938, effective September 22, 1938, whereby the powers and the jurisdiction of the Referees in Bankruptcy became broadened. This case sets forth the rule and the better practice to be followed in the 1st Circuit as follows:

“We think it is clear that the reopening of a closed case in bankruptcy rests in the sound judicial discretion of the district judge and an application for that purpose should be made to him and not to the referee to whom the case was originally referred; that the latter's authority under the original order of reference ceased after he made his report and the case was closed; and that if the district judge orders the [70] case reopened, he should also enter an order referring the case to a referee, who should call a

new meeting of the creditors for the appointment of a new trustee. In *re Rochester Sanitarium & Baths Co.*, 2 Cir., 222 F. 22, 23, 26, 27; In *re Newton*, 8 Cir., 107 F. 429, 431; 6 *Remington*, Sec. 2980; 1 *Collier*, p. 172."

At the time this decision was rendered, Chapter I, Sec. 1(7) defined a court as "court shall mean the court of bankruptcy in which the proceedings are pending, and may include the referee; and Chapter I, Sec. 1(16) defined a judge as "judge shall mean a judge of a court of bankruptcy, not including the referee." After the Chandler amendment became effective, while in Sec. 1(9) of Chapter I, the definition of a court was changed to read "court shall mean the judge or the referee of the court of bankruptcy in which the proceedings are pending;" the definition of a "judge" in Sec. 1(20) of Chapter I remains unchanged.

While there are decisions of other circuits holding that a petition for reopening should be presented to a district judge, which cannot include a referee, these decisions are not binding on this court as a rule of decision under the doctrine of *stare decisis*, and it is not clear if these decisions, which seem to sustain the position of the Petitioner on Review here, were also made in contravention of, or in the absence of, any local rule of court which may or may not have been in conflict with the Bankruptcy Act.

Sec. 2(8) of Chapter II of the present Bankruptcy Act, as amended, gives the courts of the United States, created as courts of bankruptcy, which necessarily includes a referee of a court of bankruptcy under Sec. 1(9) of Chapter [71] I, *supra*, power to "close estates; . . .

and reopen estates for cause shown.” (Sec. 38(6) of the present Bankruptcy Act (jurisdiction of Referees) specifically gives the Referees power to perform such of the duties as are by this Act conferred on courts of bankruptcy, including those incidental to ancillary jurisdiction, and as shall be prescribed by rules or orders of the courts of bankruptcy of their respective districts, except as here-in otherwise provided;” (emphasis supplied).

Local Court Rule 208(a) of this court, Reopening Closed Estates, as amended on September 15th, 1947, and which is an old rule of this court, reads as follows:

“Rule 208(a) A Petition to reopen a closed estate shall be filed with, heard by, and ruled upon by the referee to whom the case in question was last referred, if he is still in office and if the reference to him has not been expressly revoked; otherwise such petition shall be filed with the clerk and the case shall thereupon be re-referred to a referee who shall hear and rule upon the petition to reopen the estate.”

General Order 12(1) of the present Bankruptcy Act, as amended, likewise provides that “a copy of the order referring a proceeding to a Referee shall forthwith be sent by mail to the Referee, or be delivered to him personally by the clerk or other officer of the court. And thereafter all the proceedings, except such as are required by the Act or by these general orders to be had before the judge, shall be had before the referee.” (Emphasis supplied.)

There is nothing in the Bankruptcy Act, as amended, which specifically prohibits the passing upon the reopen-

ing [72] of a closed case by a Referee, and this court is of the opinion that the local rule of this court (*supra*) conferring such authority upon the Referee is a valid and binding rule of court. No formal procedure is prescribed or required for reopening an administration. *Schofield v. Moriyama* (C. C. A., Cal. 1928), 24 F. 2d 473, 11 Am. Bankr. Rep. N. S. 588.

The procedure to be followed in this district for the reopening of a closed estate, as directed by Local Rule 208(a), is one of procedure exclusively and was adopted for the expeditiousness of business; it in no way affects the substantive rights of the parties, and, regardless of whether or not the Referee denies or grants the petition to reopen an estate, there is still a review to the District Judge by way of a Petition for Review.

The ruling of this court is that the petition for reconsidering and reforming the final decree was properly presented to the Referee in the first instance.

The order of the Referee in Bankruptcy re-opening the case is affirmed. Investors Commercial Corporation, a corporation, petitioner, will prepare Judgment and file with the Court on or before April 9th, 1948.

Dated at Los Angeles, California, this second day of April, 1948.

J. F. T. O'CONNOR

United States District Judge

[Endorsed]: Filed Apr. 2, 1948. Edmund L. Smith, Clerk. [73]

In the District Court of the United States
Southern District of California
Central Division

No. 44685 O'C

In the Matter of

COMMERCIAL WHOLESALERS, INC.,
a California corporation,

Debtor.

JUDGMENT

This matter coming on for hearing before the Honorable J. F. T. O'Connor, United States District Judge, on this 22nd day of March, 1948, upon the petition of Commercial Wholesalers, Inc., a corporation, for review of the order of modification of final decree made by Hubert F. Laugharn, Referee, entered on the 24th day of December, 1947, petitioner being represented by his attorney, Alfred Gitelson, by Robert R. Ashton, Esquire, and respondent, Investors Commercial Corporation, a corporation, being represented by its attorneys Catlin & Catlin, by Frank D. Catlin, Esquire, and after arguments of counsel, and being fully advised in the premises,

It Is Ordered, Adjudged and Decreed that said petition for review be and the same is hereby overruled; and

It Is Further Ordered, Adjudged and Decreed that the order of modification of final decree made and entered by Hubert F. Laugharn, Referee, on the 24th day of December, 1947, be and the same is [74] hereby affirmed.

Done in open court this 6 day of April, 1948.

J. F. T. O'CONNOR

Judge

Judgment entered Apr. 6, 1946. Docketed Apr. 6, 1948. Book C. O. B. 50, page 45. Edmund L. Smith, Clerk, by Francis E. Cross, Deputy.

[Endorsed]: Filed Apr. 6, 1948. Edmund L. Smith, Clerk. [75]

[Title of District Court and Cause]

NOTICE OF ENTRY OF JUDGMENT

To the Commercial Wholesalers, Inc., a California Corporation, Debtor, and to its attorney, Alfred Gitelson, Esq.:

You, and each of you, are hereby notified that the judgment signed by J. F. T. O'Connor, United States District Judge, confirming the order of modification of final decree made and entered by Hubert F. Laugharn, Referee, on the 24th day of December, 1947, has been entered in book 50, page 45 of the records of said court on the 6th day of April, 1948.

Dated: April 8, 1948.

CATLIN & CATLIN

By Frank D. Catlin

Attorneys for Investors Commercial Corporation,
a Corporation, Respondent [76]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Apr. 12, 1948. Edmund L. Smith, Clerk. [77]

In the District Court of the United States

Southern District of California

Central Division

No. 44685-O'C

In the Matter of

COMMERCIAL WHOLESALERS, INC.,

a California corporation,

Debtor.

COMMERCIAL WHOLESALERS, INC., a California
corporation,

Appellant,

vs.

INVESTORS COMMERCIAL CORPORATION,
a corporation,

Appellee.

NOTICE OF APPEAL TO CIRCUIT COURT OF
APPEALS FROM JUDGMENT AFFIRMING
MODIFICATION OF FINAL DECREE BY
REFEREE

Notice Is Hereby Given that Commercial Wholesalers, Inc., a corporation, the Debtor herein, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the Judgment herein, dated April 6th, 1948, and entered April 6, 1948, in book 50 at page 45 of the records of this court, affirming the Order of Modification

of Final Decree made and entered by Hubert F. Laugharn,
Referee, on the 24th day of [78] December, 1947.

Dated: April 29th, 1948.

ALFRED GITELSON

By Alfred Gitelson

Counsel for Commercial Wholesalers, Inc.,
Appellant

Address: 1151 So. Broadway, Los Angeles
15, California

To: Messrs. Catlin & Catlin

Attorneys for Investors Commercial
Corporation, a corporation, Appellee

Address: Title Insurance Building
433 So. Spring Street
Los Angeles 13, California [79]

[Affidavit of Service by Mail]

[Endorsed]: Filed May 4, 1948. Edmund L. Smith,
Clerk. [80]

[Title of District Court and Cause]

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY ON APPEAL

The appellant states that the points upon which it intends to rely on the appeal in this matter are as follows:

(1) The Judgment appealed from is erroneous for the reason that the Referee's Order which it affirms, purports to modify the Final Decree previously made and entered by the Referee; and the Referee had no jurisdiction, power or authority to reconsider, reform, modify or amend said Final Decree.

(2) The Judgment appealed from is erroneous for the reason that it affirms an Order made and entered by the Referee [81] based upon an Order of the Referee reopening this estate after said estate had been closed; and the Referee had no jurisdiction to order that this estate be reopened.

(3) The Judgment appealed from is erroneous for the reason that the Order of the Referee which said Judgment affirms was erroneous because the First Amended Plan of Arrangement constituted an accord and satisfaction extinguishing the obligations of the creditors.

Dated: April 29th, 1948.

ALFRED GITELSON

By Alfred Gitelson

Counsel for Commercial Wholesalers, Inc.,
Appellant [82]

[Affidavit of Service by Mail.]

[Endorsed]: Filed May 4, 1948. Edmund L. Smith,
Clerk. [83]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 90, inclusive, contain full, true and correct copies of Petition in Involuntary Bankruptcy; Petition for Arrangement Under Section 321 in Pending Bankruptcy; Approval of Debtor's Petition and Order of Reference Under Section 321 of the Bankruptcy Act; Order Granting Leave to Propose Modification of Arrangement; Petition for Leave to Propose First Amended Plan of Arrangement; First Amended Plan of Arrangement; Application for Confirmation of First Amended Plan of Arrangement; Order Confirming Arrangement Under Chapter XI; Petition for Final Decree; Final Decree; Petition for Reconsidering and Reforming Final Decree Made on November 12, 1947; Order to Show Cause; Modification of Final Decree; Petition for Order Extending Time Within Which to Petition for Review; Petition for Review of Referee's Order by Judge; Certificate on Review; Statement of Facts and Points and Authorities of Commercial Wholesalers, Inc., re Petition for Review of Referee's Order by Judge; Opinion; Judgment; Notice of Entry of Judgment; Notice of Appeal to Circuit Court of Appeals from Judgment Affirming Modification of Final Decree by Referee; Statement of Points Upon which Appellant Intends to Rely on Appeal; Desig-

nation of Portions of Record to be Contained in Record on Appeal and Supplementary Designation of Record on Appeal which constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$22.90 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 28 day of May, A. D. 1948.

(Seal)

EDMUND L. SMITH

Clerk

By Theodore Hocke

Chief Deputy

[Endorsed]: No. 11947. United States Circuit Court of Appeals for the Ninth Circuit. Commercial Wholesalers, Inc., a corporation, Appellant, vs. Investors Commercial Corporation, Appellee. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed June 1, 1948.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit

United States Circuit Court of Appeals
for the Ninth Circuit

No. 11947

In the Matter of

COMMERCIAL WHOLESALERS, INC.,
a California corporation,

Debtor.

COMMERCIAL WHOLESALERS, INC., a California
corporation,

Appellant,

vs.

INVESTORS COMMERCIAL CORPORATION,
a corporation,

Appellee.

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL, AND DESIGNATION OF THE PART OF THE RECORD WHICH IT DEEMS NECESSARY FOR THE CONSIDERATION THEREOF

The Appellant states that the points upon which Appellant intends to rely on appeal in this matter consist of and are contained in the Statement of Points Upon Which Appellant Intends to Rely on Appeal, appearing in the transcript of the record on appeal, and the Appellant does hereby adopt as its statement of points upon

which it intends to rely on appeal as those appearing in the transcript of the record.

The Appellant does hereby designate as the parts of the record which it thinks necessary for the consideration of this appeal, the whole of the record as certified to the Clerk of the above entitled Court herein, and does hereby designate for printing the entire of said transcript.

Dated: June 4th, 1948.

ALFRED GITELSON

By Alfred Gitelson

Counsel for Appellant

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jun. 7, 1948. Paul P. O'Brien,
Clerk.

